



## **MINUTES OF THE LAND RECLAMATION COMMISSION MEETING**

September 23, 2004

Vice Chairman Hugh Jenkins called the meeting to order at 10:00 a.m. at the Missouri Department of Natural Resources, 1738 East Elm Street, Jefferson City, Missouri.

**Commissioners Present:** Hugh Jenkins; Mimi Garstang; Bob Ziehmer; Dr. Gregory Haddock; and Kevin Mohammadi.

**Staff Present:** Larry Coen; Tom Cabanas; Richard Hall; Mike Larsen; Richard O'Dell; Larry Hopkins; and Shirley Grantham.

**Others Present:** Shelley Woods, Attorney General's Office; John W. Coleman and Steve Preston, Mid-Continental Regional Office, Office of Surface Mining; Jim Rolls, Associated Electric Coop., Inc.; Steve Rudloff, Missouri Limestone Producers Association; Jerry Gregg, Central Stone; Chris Schwedtmann, MEC; and David A. Shorr, Lathrop & Gage.

### **1. MINUTES OF THE JULY 22, 2004, MEETING**

Dr. Haddock made the motion to approve the Minutes as written. Mr. Ziehmer seconded; motion carried unanimously.

### **2. ABANDONED MINE LAND ACTIVITIES**

**AML Status Report** (Attachment 1). Mr. Cabanas stated that most of the earthwork has been completed at the Perche Creek Project. All that will be done this fall is the seeding work. At the Miller's Creek Project, the two acid ponds have been drained and are currently being filled in. Completion of this project is expected this fall.

Mr. Cabanas stated with regard to "non-coal shaft closures," some construction was being done on a house in Joplin, a concrete slab attached to a residential structure fell into a 50-foot deep hole outside the back door of the residence. The DNR Southwest Regional Office was contacted, and the complaint was subsequently routed to the Land Reclamation Program. LRP staff worked with the Office of Surface Mining and was allowed to use the under \$3,000.00 contract to address the problem. The hole has been filled, and a concrete cap will be placed on top. The staff did not do any drilling under the house to find out if there is other subsidence that might occur in the future. In instances such as this, the current problem is usually all that is addressed.

Mr. Cabanas stated that under the "bond forfeiture status report," a lot of work is being done at the Missouri Mining site located in Putnam County. The Pit 15 and 17 projects are mostly complete. The contractor is conducting some repair work that occurred due to recent heavy rains. At Pit 12, it is still planned that repairs will be made to a breached pond to mitigate an off-site impact. The Pit 14 North project has been completed. The contract cost was \$12,500.00. The Pit 14 South project was added using a change order for the Pit 15 and 17 project and involves removal of a pond and associated diversion system, gully repair, and reseeded. The change order amounted to around \$45,000.00. The contractor for the Pit 15 and 17 project did this work as well.

Mr. Cabanas stated that at Universal Coal and Energy, Pit 4, the pond maintenance work is now complete. The contract price was \$12, 800.00.

Mr. Cabanas stated regarding the "surety reclamation projects," the contractor has moved onto the Tiger Mine site at Midwest Coal. The surety company has developed a reclamation plan for the area, and work has been initiated. Work consists mainly of cleaning up the coal processing area, covering the coal slurry cell, pond renovation, topsoil replacement, and reseeded. It is hoped this project will be completed in the near future.

Mr. Cabanas noted regarding Riedel Energy, the staff had expected the surety company to have started work on this project by now. However, recent information indicates a contractor has not yet been chosen for this project. Hopefully, work will be started this year.

### 3. BOND RELEASES

#### **Summary of Industrial Minerals Bonds Released by Staff Director** (Attachment 2).

Mr. O'Dell presented this report to the Commission. He stated the Staff Director has reviewed, evaluated, and approved several Industrial Minerals bond release requests since the May 2004 Commission meeting which are as follows:

J. S. Stone, Inc., #1: 4.59 acres of agriculture for a total release amount of \$8,000.00. This is the final release on this site.

Mantle Mining Company, Langenberg Pit: 1 acre of water and 1 acre of wildlife for a total bond release amount of \$8,000.00. This is a final release for this site.

Gary, Loren & Ardis Watts, Site #1: 10 acres of development for a total release amount of \$9,000.00

Williamsville Materials, d/b/a Williamsville Stone Co., Sites 2 and 5: 4 acres of wildlife at Site #2 and 4.1 acres of wildlife and 9 acres of water at Site #5 for a total release amount of \$8,550.00.

**Coal:** (Attachment 3)

Mr. Hall noted the Office of Surface Mining (OSM) is currently processing these bond releases for the State of Missouri and doing the field inspections and making their recommendations to the Commission regarding the suitability of the Commission's actions on these requests. He stated that if the following release requests are approved, it will constitute final release of all permitted acres contained in several of the permits involved. The hydrologic reviews of all the areas requested for release were completed by OSM personnel in August 2004. No problems were found regarding the groundwater or surface water quality associated with mining activities that took place in the areas being requested for release. Vegetation success data was reviewed and approved, and an OSM report completed in May 2004. This report concluded that the ground cover and tree stocking data demonstrates success for the last year of vegetation responsibility period in this particular release area. Mr. Hall presented the following bond release requests:

**Associated Electric Coop., Inc., NEMO Mine**

**Bond Release App. PP-03-06, Permit 1984-16, Increment 1:** This release request is for Phase III release on 7 acres of previously mined pasture with a bond release amount of \$3,500.00. This would release all of the bond for this permit area.

**Bond Release App. PP-03-07, Permit 1983-12, Increment 1:** This release request is for Phase III release on 32 acres which include 3 acres of wildlife habitat, 5.5 acres pasture, 15.5 acres previously mined land-pasture, 6 acres water, and 2 acres residential, with a bond release amount of \$16,000.00. This would release all of the acres and bond on this area.

**Bond Release App. PP-03-08, Permit 1984-11, Increment 1:** This release request is for Phase II release on 4 acres of prime farmland with a bond amount of \$2,000.00 and a Phase III release on 122.5 acres. The land uses on this area include 14 acres of wildlife habitat, 94 acres of pasture, 1.5 acres of previously mined-pasture, 12 acres of water, and 1 acre of residential with a total of 126.5 acres. The dollar amount of the bond on this area is \$61,250.00. The total bond release request is for \$63,250.00. This would release all of the acres and bond on this area.

**Bond Release App. PP-03-10, Permit 1986-12, Increment 1:** This release request is for Phase II release on 9 acres with a bond amount of \$4,500.00, and a Phase III release on

99 acres with a bond amount of \$49,500.00. The land uses for this release request included 55 acres of pasture, 9 acres of previously mined-wildlife habitat, 36.5 acres of previously mined-pasture, 3 acres of water, and 4.5 acres of residential with a total acreage of 108 acres. The total bond release request for this application is \$54,000.00. This also would release all of the acres and bond on this area.

**Bond Release App. PP-03-12, Permit 1986-07, Increment 1:** This release request is for a Phase II release on 9 acres with a bond amount of \$4,500.00, and a Phase III release request on 65 acres with a bond amount of \$32,500.00. The land uses in this request are 11 acres of wildlife habitat and 63 acres of pasture land. The total bond release request for this application is \$37,000.00.

**Bond Release App. PP-04-01, Permit 1982-17:** This release request is for a Phase III release on 2.5 acres with a reclamation bond amount of \$1,500.00. The land use is previous mined land-pasture. This would release all of the bond on this area.

**Bond Release App. PP-04-02, Permit 1982-29:** This release request is for a Phase III release on 6.5 acres with a reclamation bond amount of \$3,250.00. The land uses include .9 acre of pasture, 1 acre of non-prime cropland, and 4.6 acres of pre-mined pasture.

Mr. Hall stated the Office of Surface Mining has determined that Associated Electric Cooperative, Inc., has completed reclamation of the above areas proposed for release in accordance with Missouri's regulations and the applicable permits and plans. Therefore, it is the Office of Surface Mining's recommendation that the Commission approve the above releases for reclamation liability as presented.

Dr. Haddock made the motion that the Commission approve the above seven bond release requests as presented for Associated Electric Coop., Inc, at the NEMO Mine. Mr. Ziehmer seconded; motion carried unanimously.

Mr. Coleman noted that as liability is released, this is basically a bookkeeping method. Currently, Associated Electric is self-bonded. The company renews this self-bond on an annual basis--this coming November. All the releases that are approved by the Commission throughout the year are noted, and the Office of Surface Mining sends a letter to the company noting that the various dollar amounts have been released by the Commission. Thus, this November, Associated Electric will have reduced their total self-bond liability by all of the releases approved throughout the entire year.

#### 4. OTHER BUSINESS

**Commissioners' Core Work Group Recommended Operating Policies** (Attachment 4). Mr. Coen noted as background information, the Chairmen of the various boards and commissions in the Department of Natural Resources comprised the Core Work Group that met over a period of 6-7 months to develop a recommended draft policy for all of the commissions to consider. Each commission needs to review the draft policy. Even though the goal was to try to standardize commissions, the fact is that each law covering each commission is written differently. Therefore, there are some legal provisions in each of the statutes that prevent every commission from being absolutely identical in how they conduct their business.

Mr. Coen stated he made suggested changes appropriate for the Land Reclamation Commission. Many of the changes are for the Commission to decide on how they want to do business, along with guidance from the Commission's legal counsel. He noted several suggested changes to the draft policy as follows:

Page 7, under #3, regarding a commission member's absence from meetings, it was recommended by the work group that if a member missed a certain number of meetings, they should lose their place on the commission. Under the Land Reclamation Commission (LRC) law, that provision is not contained in it. He did not believe the policy could be used to unappoint someone whom the Governor had appointed. He believed it was not legal for this commission to include this. This should be considered by the Commission.

Page 8, top of page, the policy states, "The members shall annually select from among themselves a chair and a vice chair. Commissions are encouraged to rotate the offices among the membership." The LRC law does state that the Commission shall select annually a chair and a vice chair; it does not state how to do this or which meeting of the year to do this. The Land Reclamation Commission has historically rotated those leadership positions among the public members on the Commission. It has been felt that it is more appropriate for the public members to hold those offices rather than statutory members. There is nothing in the LRC law to prevent statutory members from holding those offices. This should also be considered by the Commission.

On page 9, top of page, the policy states that "after a closed meeting the commission should return to open session. The chair should state the general topic of the discussion held during the closed session." Mr. Coen stated the Commission's legal counsel should advise it on how to proceed according to the Sunshine Law and not necessarily what has been recommended by the work group.

Mr. Coen stated on page 10, item #27, "Conduct of Meetings," the first paragraph of the draft policy states that "Roberts Rules of Order should be followed for the orderly conduct of commission business and actions." He stated he felt the Land Reclamation Commission has done this in the past. The Commission should look at this statement and decide whether it just wants to use the reference when needed and still have a choice on how it conducts business or be tied to that statement.

Mr. Coen noted there are numerous sections of the draft policy where the statutory references need to be corrected, as well as grammatical errors.

Page 15, #8, under "Decision After Hearing," the second item states that "the commission shall provide a reasonable time for oral argument upon the request of any affected parties." This is after an issue has been referred to a hearing officer or the Administrative Hearing Commission and the recommended decision comes back to the Land Reclamation Commission, the draft policy suggests that the Commission give the affected parties an opportunity to address the Commission regarding the decision. The Commission has not done this in the past, so it is something that the Commission will need to decide on how it wants to proceed.

Page 17, #3, under "Commission Web Page," it states that "the department will maintain a...webpage....Commissions are strongly encouraged to also post meeting minutes, public notices or other materials to provide for public access." The Land Reclamation Commission already does this, but Mr. Coen suggested the Commission look at this statement and decide whether the wording of this statement is what it wants in the written policy.

Mr. Coen noted that Appendix 2 discusses training for commissioners. He stated training would be helpful to new commissioners. Since the commissioners are already donating their time to the commission, they will need to decide how much additional time they are willing to commit to this process. New commission members do need some type of orientation.

Dr. Haddock stated since this will be the operating policies of this particular Commission, there is a lot of language in the draft that looks like it is the guidelines to create such policies for commissions. Will that language be cleaned up so it does not look like it is a policy guideline anymore, it actually looks like our policy?

Mr. Coen stated it can be changed to whatever the Commission wants. It really becomes a balance between what the law says and what the Commission's choice is. The Commission needs to decide how it wants to proceed.

Ms. Garstang asked with regard to commissioner training, under Appendix 2 of the policy, a new commissioner would need to attend a training class within 12 months of being appointed. After that point and time, it is only a suggestion or encouragement to attend training?

Mr. Coen replied yes. It was his opinion that none of the policies have been finalized. The suggested training is being written into the policy, but he did not believe that an official training program had been developed. Whatever is decided now may be modified based on what actual training is designed at a later date. There is the recognition that once a member becomes experienced as a commissioner, that person should know what areas of training he/she may want to attend.

#### **Comments From the Public**

Mr. Rolls, Associated Electric Cooperative, stated the company is very appreciative of the Commission's and OSM's work in processing the bond releases.

**Closed Session.** Dr. Haddock made the motion that the Land Reclamation Commission meet in Closed Session at 8:30 a.m. on November 17, 2004, for the purpose of discussing personnel actions and legal actions, causes of actions, or litigation as provided for in Section 610.021, RSMo. Ms. Garstang seconded; motion carried unanimously.

**Adjournment.** Dr. Haddock made the motion the meeting be adjourned. Mr. Ziehmer seconded; motion carried unanimously. The meeting was adjourned at 10:40 a.m.

Respectfully submitted,

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Chairman